



Department of Public Service

112 State Street, floor 3

Montpelier VT 05602

<http://bgs.vermont.gov/purchasing>

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802-828-2811

[email]

Psd.Telecom@vermont.gov

SEALED BID REQUEST FOR PROPOSAL

Vermont Universal Service Fund Fiscal Agent

ISSUE DATE: March 15, 2021

LETTER OF INTENT TO BID: March 25, 2021

QUESTIONS DUE BY: March 31, 2021 4:30 p.m.

RFP RESPONSES DUE BY: April 15, 2021 4:30 p.m.

PLEASE BE ADVISED THAT ALL NOTIFICATIONS, RELEASES, AND AMENDMENTS ASSOCIATED WITH THIS RFP WILL BE POSTED AT:

<http://www.bgs.state.vt.us/pca/bids/bids.php>

THE STATE WILL MAKE NO ATTEMPT TO CONTACT INTERESTED PARTIES WITH UPDATED INFORMATION. IT IS THE RESPONSIBILITY OF EACH BIDDER TO PERIODICALLY CHECK THE ABOVE WEBPAGE FOR ANY AND ALL NOTIFICATIONS, RELEASES AND AMENDMENTS ASSOCIATED WITH THIS RFP.

STATE CONTACT: Clay Purvis, Director for Telecommunications and Connectivity
TELEPHONE: (802) 371-9655
E-MAIL: psd.telecom@vermont.gov

1. OVERVIEW:

- 1.1. **SCOPE AND BACKGROUND:** Through this Request for Proposal (RFP) the Department of Public Service (hereinafter the "State") is seeking to establish contracts with one or more companies that can assume responsibility for the Vermont Universal Service Fund ("VUSF") as the fiscal agent. Contracts arising from this RFP will be for a period of 3 years.
 - 1.2. **SINGLE POINT OF CONTACT:** All communications concerning this RFP are to be addressed in writing to the State Contact listed on the front page of this RFP. Actual or attempted contact with any other individual from the State concerning this RFP is strictly prohibited and may result in disqualification.
 - 1.3. **LETTER OF INTENT TO BID:** Any Vendor interested in submitting a proposal must send a Letter of Intent to bid no later than the deadline on the front page. The Letter of Intent does not obligate a vendor to bid, nor does it preclude a vendor from submitting a bid. However, the Department will not answer questions posed by vendors who have not submitted Letters of Intent, nor will it circulate answers to questions to vendors who have not submitted Letters of Intent.
 - 1.4. **QUESTION AND ANSWER PERIOD:** Any vendor requiring clarification of any section of this RFP or wishing to comment or take exception to any requirements of the RFP must submit specific questions in writing no later than the deadline for question indicated on the first page of this RFP. Questions may be e-mailed to the point of contact on the front page of this RFP. Any comments, questions, or exceptions not raised in writing on or before the last day of the question period are waived. At the close of the question period a copy of all questions or comments and the State's responses will be sent to vendors who have timely submitted a Letter of Intent as described in Section 1.4. Every effort will be made to send this information as soon as possible after the question period ends, contingent on the number and complexity of the questions.
2. **DETAILED REQUIREMENTS/DESIRED OUTCOMES:** Under Vermont law, the Fiscal Agent is responsible for collecting revenue from telecommunications service providers and depositing these revenues into the VUSF. The Fiscal Agent also distributes money from the VUSF and invests current fund balances. The role of the Fiscal Agent is outlined in statute at 30 V.S.A. § 7501-7525, and specifically at Section 7503.

SUPPORTED PROGRAMS

Currently the VUSF supports five major Vermont programs:

- a) Vermont Telecommunications Relay Service program ("VTRS") (30 V.S.A. § 218a(a)-(c)), to the State Treasurer;
- b) Vermont Telecommunications Equipment Grant Program (30 V.S.A. § 218a(e)), to the State Treasurer;
- c) Vermont Enhanced 911 Program (30 V.S.A. §§ 705I-706I), to the State Treasurer;
- d) Vermont Lifeline program (30 V.S.A. § 218(c)), through offsetting credits against the obligations of local exchange carriers to the VUSF and, if necessary, through payments to those carriers;
- e) The Connectivity Fund established in 30 V.S.A. section 7516

CONTRIBUTIONS

To finance all of these programs, Vermont law imposes a broad-based charge (VUSF Charge) on all telecommunications services that interact with the public switched network. The VUSF Charge applies to "intrastate" services provided in Vermont as well as to "interstate" services that are billed to a Vermont address. The VUSF charge is uniform for all services in a given year, and applies only to retail revenues. The charge is currently set at 2%. More than 100 companies currently contribute monthly to the VUSF. These include ten incumbent "local exchange" companies. There are dozens of intrastate toll, wireless and competitive carriers. Many carriers file estimated remittances in one month and then file adjustments in the following months.

THE FISCAL AGENT

The Fiscal Agent is the financial Point of Contact for this system. Carriers collect VUSF Charges from their customers and remit the funds to the Fiscal Agent. The Fiscal Agent receives those funds, holds them in trust, invests them, and manages cash flow. The Fiscal Agent also provides a package of forms and information to carriers explaining how they should comply with the requirements of Vermont law. The Fiscal Agent transfers funds

from time to time to finance the programs authorized by the Legislature. Transfers are currently made to companies and to the state treasurer.

Vermont law authorizes the VUSF to borrow funds, but that authority has never been used. Instead, the VUSF generally maintains a positive carryforward net fund value sufficient to avoid borrowing.

The Fiscal Agent also represents the state to service providers who must collect and remit the VUSF. The Fiscal Agent should work with the staff of the Public Service Department to maintain current carrier lists and otherwise ensure that all telecommunications services that are subject to the VUSF charge are actually charged and that the receipts are remitted to the Fiscal Agent. The Public Service Department expects the fiscal agent to ensure that carriers are correctly contributing to the fund and may require carrier audits to ensure compliance. The fiscal agent will be expected to develop a plan and procedure for identifying anomalies and carrying out audits. This may require field visits by auditors with detailed knowledge of the VUSF contribution rules.

The Fiscal Agent may be an individual or an organization. Bidders of either type should demonstrate sufficient resources to perform the task adequately. An individual bidder should also develop formal or informal relationships with other organizations, such as banks. For example, an individual bidder might want to develop a "lock box" system at a bank to collect receipts and use a bank's commercial or trust operations for making short-term investments. An individual bidder should also establish backup systems in the event of illness or other emergency.

The fiscal agent is responsible for producing financial reports to the Department of Public Service throughout the year, including monthly performance reports.

The fiscal agent is also responsible for the Connectivity Fund. The Connectivity Fund supports a high cost program and broadband grant fund in accordance with 30 V.S.A. §§ 7515, 7515b, and 7516. The fiscal agent is responsible for managing these funds, making payments pursuant to the above reference statutes, and providing reports on fund activities, including an annual accounting.

3. GENERAL REQUIREMENTS:

3.1. **PRICING:** Bidders must price the terms of this solicitation at their best pricing. Any and all costs that Bidder wishes the State to consider must be submitted for consideration. If applicable, all equipment pricing is to include F.O.B. delivery to the ordering facility. No request for extra delivery cost will be honored. All equipment shall be delivered assembled, serviced, and ready for immediate use, unless otherwise requested by the State.

3.1.1. Prices and/or rates shall remain firm for the initial term of the contract. The pricing policy submitted by Bidder must (i) be clearly structured, accountable, and auditable and (ii) cover the full spectrum of materials and/or services required.

3.1.2. **Cooperative Agreements.** Bidders that have been awarded similar contracts through a competitive bidding process with another state and/or cooperative are welcome to submit the pricing in response to this solicitation.

3.2. **OTHER REQUIREMENTS:** The first part of each bid should include a general discussion of the approach the bidder will take and explain how the bidder will meet each requirement of the contract. In addition, this part of the bid should identify all individuals who will work on significant tasks, and should explain the qualifications of each. A single individual should be identified to serve as Fund Manager, and that individual's resume should be attached. Resumes for other identified persons with significant responsibility should also be attached. The bid should describe the bidder's institutional stability. The state has an interest in the continuity of this program, and wants to minimize the chance of program disruption from personal or life changes in the lives of the bidder or the bidder's firm. Individual bidders should show that they have established substitute service arrangements that will provide comparable security of administration to that offered by an institutional Fiscal Agent, including substitute service for illness or vacation periods. For example, an individual bidder might associate with a larger firm and identify an individual or individuals in that firm who agree to serve as substitute Fiscal Agent. If the bidder plans to associate with another organization to provide the required services, the bid should include a separate statement from that organization describing its anticipated role and stating a willingness to become a party to the contract with the State. Qualifications of relevant individuals in such organizations may also be submitted.

The second part of the bid document should be a price quotation. Although the draft contract includes a financial structure for reimbursing the contractor, bidders may propose other pricing structures. However, this part of the bid should at least specifically describe:

- a. One-time startup costs, if any, and the proposed method of recovering those costs. Normally, the choices would be a one-year surcharge or amortization over the three year term.
 - b. Fixed annual costs for each of the three years. This should cover most anticipated expenses, such as personnel, office costs, and overhead, and may include an allowance for travel. The amount may vary for each year based upon expected inflation or expected unusual events.
 - c. Estimated costs of an annual external audit.
 - d. Any other one-time or occasional costs. This may include functions, like extraordinary travel, carrier audits and defense of lawsuits that are not predictable but that would impose significant costs. These costs may be stated as dollars per day or per hour.
 - e. Bids should describe how the bidder plans to invest funds, methods of insurance or collateralization, and yields likely from those methods. Bidders are not required to propose any mechanisms or sources related to borrowing.
 - f. Bids should describe a plan and cost for auditing carrier accounts on a routine basis.
- 3.3. A draft statement of work is attached to this RFP. Bidders should review the statement of work and include any proposed changes in its proposal.

3.4. BEST AND FINAL OFFER:

3.4.1. **Best and Final Offer (BAFO).** At any time after submission of Responses and prior to the final selection of Bidder(s) for Contract negotiation or execution, the State may invite Bidder(s) to provide a BAFO.

3.4.1.1. The state reserves the right to request BAFOs from only those Bidders that meet the minimum qualification requirements and/or have not been eliminated from consideration during the evaluation process.

3.4.2. **Evaluation of Responses and Selection of Bidder(s).** The State shall have the authority to evaluate Responses and select the Bidder(s) as may be determined to be in the best interest of the State and consistent with the goals and performance requirements outlined in this RFP.

3.5. **WORKER CLASSIFICATION COMPLIANCE REQUIREMENTS:** In accordance with Section 32 of The Vermont Recovery and Reinvestment Act of 2009 (Act No. 54), Bidders must comply with the following provisions and requirements.

3.5.1. Self Reporting: For bid amounts exceeding \$250,000.00, Bidder shall complete the appropriate section in the attached Certificate of Compliance for purposes of self-reporting information relating to past violations, convictions, suspensions, and any other information related to past performance relative to coding and classification of workers. The State is requiring information on any violations that occurred in the previous 12 months.

3.5.2. Subcontractor Reporting: For bid amounts exceeding \$250,000.00, Bidders are hereby notified that upon award of contract, and prior to contract execution, the State shall be provided with a list of all proposed subcontractors and subcontractors' subcontractors, together with the identity of those subcontractors' workers compensation insurance providers, and additional required or requested information, as applicable, in accordance with Section 32 of The Vermont Recovery and Reinvestment Act of 2009 (Act No. 54). This requirement does not apply to subcontractors providing supplies only and no labor to the overall contract or project. This list **MUST** be updated and provided to the State as additional subcontractors are hired. A sample form is available online at <http://bgs.vermont.gov/purchasing-contracting/forms>. **The subcontractor reporting form is not required to be submitted with the bid response.**

3.6. EXECUTIVE ORDER 05-16: CLIMATE CHANGE CONSIDERATIONS IN STATE PROCUREMENTS:

For bid amounts exceeding \$25,000.00 Bidders are requested to complete the Climate Change Considerations in State Procurements Certification, which is included in the Certificate of Compliance for this RFP.

After consideration of all relevant factors, a bidder that demonstrates business practices that promote clean energy and address climate change as identified in the Certification, shall be given favorable consideration in the competitive bidding process. Such favorable consideration shall be consistent with and not supersede any preference given to resident bidders of the State and/or products raised or manufactured in the State, as explained in the Method of Award section. But, such favorable consideration shall not be employed if prohibited by law or other relevant authority or agreement.

- 3.7. **METHOD OF AWARD:** Awards will be made in the best interest of the State. The State may award one or more contracts and reserves the right to make additional awards to other compliant bidders at any time if such award is deemed to be in the best interest of the State. All other considerations being equal, preference will be given first to resident bidders of the state and/or to products raised or manufactured in the state, and then to bidders who have practices that promote clean energy and address climate change, as identified in the applicable Certificate of Compliance.

- 3.7.1. **Evaluation Criteria:** Consideration shall be given to the Bidder's project approach and methodology, qualifications and experience, ability to provide the services within the defined timeline, cost, and/or success in completing similar projects, as applicable, and to the extent specified below.

3.7.1.1. Price will be a principal consideration. Since bids may include one or more segments that are being bid at an hourly or otherwise variable price, bids may not be directly comparable in terms of a single dollar amount. However, the committee will consider all of the fixed and variable prices contained in the bid in evaluating it.

3.7.1.2. The bidder's expected quality of performance will also be a principal consideration. Within this category, the committee will consider the bidder's understanding of the duties of the Fiscal Agent, the bidder's probable success in discharging the duties of Fiscal Agent, the bidder's prior experience with finances, and the bidder's knowledge of the telecommunications industry. Also considered will be the bidder's communication skills and apparent willingness to work closely with the Department of Public Service, and the bidder's expected performance in pursuing delinquent carriers.

3.7.1.3. The bidder's institutional stability will also be considered.

- 3.8. **STATEMENT OF RIGHTS:** The State of Vermont reserves the right to obtain clarification or additional information necessary to properly evaluate a proposal. Vendors may be asked to give a verbal presentation of their proposal after submission. Failure of vendor to respond to a request for additional information or clarification could result in rejection of that vendor's proposal. To secure a project that is deemed to be in the best interest of the State, the State reserves the right to accept or reject any and all bids, in whole or in part, with or without cause, and to waive technicalities in submissions. The State also reserves the right to make purchases outside of the awarded contracts where it is deemed in the best interest of the State.

- 3.9. **CONTRACT TERMS:** The selected bidder(s) will be expected to sign a contract with the State, including the Standard Contract Form and Attachment C as attached to this RFP for reference. The contract will obligate the bidder to provide the services and/or products identified in its bid, at the prices listed.

- 3.9.1. **PAYMENT TERMS:** All invoices are to be rendered by the Contractor on the vendor's standard billhead and forwarded directly to the institution or agency ordering materials or services and shall specify the address to which payments will be sent. Payment terms are Net 30 days from receipt of an error-free invoice with all applicable supporting documentation. Percentage discounts may be offered for prompt payments of invoices; however, such discounts must be in effect for a period of 30 days or more in order to be considered in making awards.

4. **CONTENT AND FORMAT OF RESPONSES:** The content and format requirements listed below are the minimum requirements for State evaluation. These requirements are not intended to limit the content of a Bidder's proposal. Bidders may include additional information or offer alternative solutions for the State's consideration. However, the State discourages overly lengthy and costly proposals, and Bidders are advised to include only such information in their response as may be relevant to the requirements of this RFP.

4.1. **NUMBER OF COPIES:**

- 4.1.1. Submit an unbound original (clearly marked as such) and three (3) paper copies and one digital copy in PDF, which can be mailed to psd.telcom@vermont.gov.

4.1.2. The bid should include a Cover Letter and Technical Response and a separate Pricing Response.

4.2. COVER LETTER:

4.2.1. Confidentiality. To the extent your bid contains information you consider to be proprietary and confidential, you must comply with the following requirements concerning the contents of your cover letter and the submission of a redacted copy of your bid (or affected portions thereof).

4.2.2. The successful response will become part of the contract file and will become a matter of public record, as will all other responses received. If the response includes material that is considered by the bidder to be proprietary and confidential under the State's Public Records Act, 1 V.S.A. § 315 et seq., the bidder shall submit a cover letter that clearly identifies each page or section of the response that it believes is proprietary and confidential. The bidder shall also provide in their cover letter a written explanation **for each marked section** explaining why such material should be considered exempt from public disclosure in the event of a public records request, pursuant to 1 V.S.A. § 317(c), including the prospective harm to the competitive position of the bidder if the identified material were to be released. Additionally, the bidder must include a redacted copy of its response for portions that are considered proprietary and confidential. Redactions must be limited so that the reviewer may understand the nature of the information being withheld. It is typically inappropriate to redact entire pages, or to redact the titles/captions of tables and figures. Under no circumstances can the entire response be marked confidential, and the State reserves the right to disqualify responses so marked.

4.2.3. Exceptions to Terms and Conditions. If the bidder wishes to propose an exception to any terms and conditions set forth in the Standard Contract Form and its attachments, such exceptions must be included in the cover letter to the RFP response. Failure to note exceptions when responding to the RFP will be deemed to be acceptance of the State contract terms and conditions. If exceptions are not noted in the response to this RFP but raised during contract negotiations, the State reserves the right to cancel the negotiation if deemed to be in the best interests of the State. Note that exceptions to contract terms may cause rejection of the proposal.

4.3. **BACKGROUND AND EXPERIENCE.** Provide details concerning the form of business organization, company size and resources; describe particular experience relevant to the proposed project, and list all current or past State projects.

If a Bidder intends to use subcontractors, the Bidder must identify in the proposal the names of the subcontractors, the portions of the work the subcontractors will perform, and address the background and experience of the subcontractor(s), as above.

4.4. **REFERENCES.** Provide the names, addresses, and phone numbers of at least three companies with whom you have transacted similar business in the last 12 months. You must include contact names who can talk knowledgeably about performance.

4.5. **REPORTING REQUIREMENTS:** Provide a sample of any reporting documentation that may be applicable to the Detailed Requirements of this RFP.

4.6. **PRICING:** Bidders shall submit their pricing information in the Price Schedule attached to the RFP. Bidders may be required to submit pricing information separate from their bid package if specifically required above.

4.7. **CERTIFICATE OF COMPLIANCE:** This form must be completed and submitted as part of the response for the proposal to be considered valid.

5. SUBMISSION INSTRUCTIONS:

5.1. **CLOSING DATE:** Bids must be received by the due date and at the location specified on the front page of this RFP.

5.2. **SECURITY PROCEDURES:** Please be advised extra time will be needed when visiting and/or delivering information to 112, Floor 3, State Street. All individuals visiting 112 State Street must present a valid government issued photo ID when entering the facility.

5.3. **SEALED BID INSTRUCTIONS:** All bids must be sealed and must be addressed to the State of Vermont, Office of Department of Public Service, **112 State Street – Third Floor, Montpelier, VT 05602.** BID

ENVELOPES MUST BE CLEARLY MARKED 'SEALED BID' AND SHOW THE REQUISITION NUMBER AND/OR PROPOSAL TITLE, OPENING DATE AND NAME OF BIDDER.

5.3.1. All bidders are hereby notified that sealed bids must be received and time stamped by the Office of Department of Public Service located at **112 State Street – Third Floor, Montpelier, VT 05602** - by the time of the due date. Bids not in possession of the Office of Department of Public Service at the time of the due date will be returned to the vendor, and will not be considered. **Any delay deemed caused by Security Procedures will be at the bidder's own risk.**

5.4. DELIVERY METHODS:

5.4.1. SECURITY PROCEDURES: Note that security procedures concerning delivery of any mail or parcels to 112 State Street may delay receipt of mail/parcel pieces.

5.4.2. U.S. MAIL: Bidders are cautioned that it is their responsibility to originate the mailing of bids in sufficient time to ensure bids are received and time stamped by the Department of Public Service prior to the time of the due date.

5.4.3. EXPRESS DELIVERY: If bids are being sent via an express delivery service, be certain that the RFP designation is clearly shown on the outside of the delivery envelope or box. Express delivery packages will not be considered received by the State until the express delivery package has been received and time stamped by the Office of Department of Public Service. **Due to security procedures express deliveries must be received by 10:30 A.M. in order to be received by the Department that same day.**

5.4.4. HAND DELIVERY: Hand carried bids shall be delivered to a representative of the Department prior to the due date.

5.4.5. ELECTRONIC: Electronic bids will not be accepted, as a substitute for paper copies.

5.4.6. FAX BIDS: Faxed bids will not be accepted.

6. ATTACHMENTS:

6.1. Standard State Contract Template Form

6.2. Attachment C: Standard State Contract Provisions (December 15, 2017)

6.3. Certificate of Compliance

6.4. Worker Classification Compliance Requirement; Subcontractor Reporting Form

STATE OF VERMONT STANDARD CONTRACT FOR SERVICES Contract # _____

1. **Parties.** This is a contract for services between the State of Vermont, _____ (hereinafter called "State"), and _____, with a principal place of business in _____, (hereinafter called "Contractor"). Contractor's form of business organization is _____. It is Contractor's responsibility to contact the Vermont Department of Taxes to determine if, by law, Contractor is required to have a Vermont Department of Taxes Business Account Number.

2. **Subject Matter.** The subject matter of this contract is services generally on the subject of _____. Detailed services to be provided by Contractor are described in Attachment A.

3. **Maximum Amount.** In consideration of the services to be performed by Contractor, the State agrees to pay Contractor, in accordance with the payment provisions specified in Attachment B, a sum not to exceed \$_____.00.

4. **Contract Term.** The period of contractor's performance shall begin on _____, 20__ and end on _____, 20__.

5. **Prior Approvals.** This Contract shall not be binding unless and until all requisite prior approvals have been obtained in accordance with current State law, bulletins, and interpretations.

6. **Amendment.** No changes, modifications, or amendments in the terms and conditions of this contract shall be effective unless reduced to writing, numbered and signed by the duly authorized representative of the State and Contractor.

7. **Cancellation.** This contract may be canceled by either party by giving written notice at least thirty (30) days in advance.

8. **Attachments.** This contract consists of ____ pages including the following attachments which are incorporated herein:

Attachment A - Statement of Work

Attachment B - Payment Provisions

Attachment C – "Standard State Provisions for Contracts and Grants" a preprinted form (revision date 12/15/2017)

Attachment D - Other Provisions (if any)

Additional attachments may be lettered as necessary

9. **Order of Precedence.** Any ambiguity, conflict or inconsistency between the documents comprising this contract shall be resolved according to the following order of precedence:

(1) Standard Contract

(2) Attachment D (if applicable)

(3) Attachment C (Standard Contract Provisions for Contracts and Grants)

(4) Attachment A

(5) Attachment B

List other attachments, if any, in order of precedence

STATE OF VERMONT STANDARD CONTRACT FOR SERVICES Contract # _____

WE THE UNDERSIGNED PARTIES AGREE TO BE BOUND BY THIS CONTRACT

By the State of Vermont:

Date: _____

Signature: _____

Name: _____

Title: _____

By the Contractor:

Date: _____

Signature: _____

Name: _____

Title: _____

DRAFT ATTACHMENT A – STATEMENT OF WORK

This draft example of a statement of work is subject to change based on the winning proposal and negotiation between the State and vendor.

The Contractor shall serve as the fiscal agent for the VUSF in accordance with 30 V.S.A §§ 7501-7525. Some of Contractor’s specific duties listed below are identified as “Additional Services.” This designation relates to the method by which Contractor will be paid under Attachment B, 5(b) and 6. Any service not described as an Additional Service or reimbursed expense, is a Basic Service paid at the fixed costs described in Attachment B, 5(a). Contractor shall perform the following.

1. Fiscal Agent

- a. Contractor will act as the fiscal agent for the Vermont Universal Service Fund created by 30 V.S.A. Chapter 88 (“the Act”). This is a fiduciary relationship in which Contractor receives, distributes and accounts for funds and holds those funds in trust for Vermont’s telecommunications ratepayers. Contractor’s actions will be consistent with interpretations of the Act issued by the Public Service Board by rule or by opinion.
- b. Contractor will develop and utilize internal procedures for collecting and processing carrier remittances, disbursing funds, and making periodic account statements to carriers. Those procedures will include internal controls to maintain fund integrity, and they will include backup procedures (including offsite storage) to minimize the risk of data loss.
- c. If this contract is canceled or if Contractor is not selected as the fiscal agent to serve after this contract expires, both parties will thereafter cooperate fully during the following three-month period in transferring responsibilities to any successor Fiscal Agent named by the State, to ensure a smooth transition. As requested by the State, Contractor’s cooperation under this section will include at least the following actions:
 - i. Promptly making a preliminary transfer of current financial records in a common electronic format to the new fiscal agent.
 - ii. Making a final transfer of the remaining balance of the VUSF, together with a final transfer of current financial records in a paper and common electronic format, to the new fiscal agent.
 - iii. Cooperating with an audit of its operations under this contract.
- d. Transition work by Contractor will be reimbursed at a rate equal to 103 percent of the applicable per-hour or per-day rate charged during the last year of this contract.

2. Carrier Contacts

- a. Contractor will take reasonable care, on an ongoing basis, to identify carriers that are required to be remitting payments to the VUSF. Contractor will periodically consult national lists of carriers. Contractor also will periodically coordinate with carrier lists maintained by the Clerk of the Public Service Board and by the Department of Public Service.

If federal law prohibits Vermont from requiring Certificates of Public Good from certain service providers that are liable to collect and remit the VUSF charge, Contractor will make reasonable efforts to identify such providers as well.

- b. Contractor will seek to ensure compliance of carriers with the Act by advising them of VUSF practices and procedures. This includes written and telephone correspondence with carriers and consumers to explain VUSF administration and the purposes for which VUSF charges are assessed. Contractor will inform carriers of all changes in the charge rate for the VUSF.
- c. On request of carriers, Contractor will offer oral or written advice concerning the meaning of the Act and the Public Service Board's rules and interpretations of the Act. Contractor may also issue advice in areas where there is no established policy, but shall consult with the Department of Public Service or its staff before issuing an opinion involving significant policy issues. Contractor will take care that its interpretations are internally consistent. From time to time, Contractor may request that the Public Service Board revise its summary document codifying current policies under VUSF or issue further declaratory rulings as may be necessary to resolve questions under the Act, but after first consulting with the Department on the proposed request.
- d. Carriers will be primarily responsible for explaining to customers how the VUSF charge applies to customer bills. However, on an occasional basis if a carrier is unable to answer a customer's inquiry satisfactorily and the customer makes an oral or written inquiry of Contractor, Contractor will make a reasonable effort to answer that inquiry after consultation with the Department's Consumer Affairs and Public Information Division.
- e. Contractor will develop an information package for carriers. The package will include a letter of introduction, copies of applicable statutes and interpretations from the Public Service Board, a VUSF remittance form, detailed instructions for completing the form and remitting payment to Contractor, and any customer notices required by the annual rate-setting order of the Vermont Public Service Board. Contractor will mail the package to new carriers as they are identified and to known carriers, upon request.
- f. Contractor will be available and responsive to all interested parties during normal business hours. Contractor will also maintain a website with appropriate VUSF information.

3. Collections from Carriers

- a. Contractor will design and produce a carrier remittance form for carriers to remit monthly their VUSF collections and to calculate remittance amounts. Contractor will also design and develop a monthly carrier account statement. Contractor will require carrier remittances to be certified as correct.

- b. Contractor will collect remittances from an estimated 400 service providers on a monthly basis. Under 30 V.S.A. § 7524(b), payments must be made by the 15th of the month. Carrier remittances will be collected through a dedicated “lockbox” system selected by the Contractor and serving only the VUSF. Lockbox deposits will be swept daily into bank accounts or investment funds.
- c. Local exchange carriers that grant lifeline credits to their customers may deduct the amount of those credits from their monthly remittances. Carriers may adjust the amounts so claimed at the close of Vermont’s fiscal year, through true-ups to actual amounts.
- d. Contractor will recognize the State’s established accounting policies for carriers, including the ability of carriers to elect to become accrual basis providers. Contractor will accept letters from carriers electing to file on an accrual basis.
- e. Contractor will allow carriers who collect small amounts of VUSF charges to remit collections quarterly or annually. Contractor will establish and may alter thresholds for these quarterly and annual collection amounts, subject to the approval of the State.
- f. Contractor will take reasonable care to ensure that carriers remit payments completely and on a timely basis. Contractor will regularly issue printed or electronic statements of account to all carriers.
- g. Contractor will inform carriers whether they are required to file monthly, quarterly, or annually.
- h. Contractor will examine and analyze carrier remittances. Contractor will evaluate submissions and will apply expert judgement to these evaluations. Contractor will contract submitting carriers when filings raise unanswered questions or appear to be erroneous, will investigate as needed, and will report results to the State and the Vermont Department of Public Service, if appropriate.

Carrier submissions will be evaluated for mathematical or other errors or omissions, for internal inconsistencies and for compliance with remittance procedures, as well as to identify significant unexpected variances from past behavior.

Review of Vermont Lifeline credits will examine data both for the carrier as a whole and for its per-customer reported data, and will evaluate the reasonableness of the reported average benefit size under Vermont law and policies, as well as the reasonableness of reported administrative expenses.

If so directed by the State, Contractor will undertake a review or audit of the financial records and reports of one or more carriers (Additional Services reimbursement).

4. Delinquent Payments

- a. Contractor will determine delinquencies under 30 V.S.A. § 1525(a) and so inform carriers as needed.
 - i. Where a carrier appears to have missed a required payment, Contractor will estimate the amount due and include that estimate in its statement of account to the carrier. The carrier may correct the estimate by a subsequent filing.

- ii. Contractor will routinely assess interest charges upon carriers making late payments, at the rate of 1.5 percent per month.
 - iii. Contractor will actively pursue late payments and delinquencies in an effort to collect all amounts due to the VUSF.
 - iv. If so requested by a carrier or if an appeal is taken to the Public Service Board as authorized by 30 V.S.A. § 7525(c)), Contractor will prepare and transmit to the Public Service Board, the Department of Public Service, and the carrier a written summary of the findings and conclusions that led to the delinquency notice.
- b. In the event that Contractor's reasonable efforts fail to secure collection of delinquent VUSF charges for 90 days, Contractor will so inform the Public Service Board and the Vermont Department of Public Service and provide complete documentation of charges assessed, delinquency notices, and other collection activities to date.

Additional proceedings may begin for delinquency, such as to revoke the delinquent carrier's Certificate of Public Good. If so directed by the State, Contractor will participate in any hearing generated by further collection efforts, including by offering written and oral testimony (Additional Services reimbursement).

5. Fund Management

- a. Contractor holds VUSF funds as a trust fiduciary, not as an owner. VUSF monies will be tracked by Contractor as separate and unique accounts, and earnings of VUSF monies will be credited to the VUSF. Vermont's ratepayers continue to hold equitable title to these funds until they have been disbursed by the Contractor pursuant to 30 V.S.A. §§ 7511-7515 and as described below.
- b. Contractor will invest cash resources of the VUSF in bank accounts and financial instruments so that they are insured to the maximum extent permitted by law and so that they earn a return commensurate with that of state funds held on deposit in banks or other financial institutions. To the extent that funds are not held in insured accounts, they may be held in secure short-term investments designed to maximize security, liquidity and yield, in that order and consistent with the investment plan submitted in Contractor's bid.
- c. VUSF investment-related expenses and banking fees will be netted against earnings from investments.
- d. As required by 30 V.S.A. § 7524(b), at least once per year Contractor will make a general settlement with each carrier. Monthly, quarterly, or annual account statements from Contractor to a carrier will satisfy this requirement, provided that the carrier does not object or otherwise take exception to the statement.
- e. Contractor will accumulate and store carrier data, including revenue data and service information, in a database. Contractor will analyze the database to compare current reported data to previously reported data. Contractor will make appropriate inquiries of carriers that file returns with unexpected increases or decreases in contributions.

- f. If claims in any fiscal year exceed anticipated funds available in that fiscal year, Contractor will so advise the State with reasonable promptness. Contractor will use the carrier database to develop its projections of anticipated receipts.
- g. Contractor shall manage the Connectivity Fund and hold these funds in trust. Contractor shall invest cash resources in bank accounts and financial instruments so that they are insured to the maximum extent permitted by law and so that they earn a return commensurate with that of state funds held on deposit in banks or other financial institutions. The fiscal agent shall disburse funds in accordance with the programs funded by the Connectivity Fund. As required by §7516, Contractor shall make a determination on or before September 1 of each year as to the funds in the VUSF available for distribution to the Connectivity Fund.

6. Fund Disbursement

- a. Contractor will disburse VUSF funds as authorized by law for the benefit of the:
 - f) Vermont Telecommunications Relay Service program (“VTRS”) (30 V.S.A. § 218a(a)-(c)), to the State Treasurer;
 - g) Vermont Telecommunications Equipment Grant Program (30 V.S.A. § 218a(e)), to the State Treasurer;
 - h) Vermont Enhanced 911 Program (30 V.S.A. §§ 705l-706l), to the State Treasurer;
 - i) Vermont Lifeline program (30 V.S.A. § 218(c)), through offsetting credits against the obligations of local exchange carriers to the VUSF and, if necessary, through payments to those carriers;
 - j) The Connectivity Fund established in 30 V.S.A. section 7516; and
 - k) For fiscal year 2016 only, any personnel or administrative costs associated with the Connectivity Initiative shall come from the Connectivity Fund
- b. Disbursements will be made after consultation with persons who administer USF-funded programs, including the Department of Public Service and the Executive Director of the Vermont E-911 program. Contractor will communicate with program administrators concerning anticipated disbursements and will exercise reasonable care to ensure that, consistent with resources of the VUSF itself, funded programs receive timely support. Contractor will make reasonable efforts to ensure that disbursements are evenly divided in 12 monthly payments per year, except that monies for the Connectivity Initiative shall be disbursed upon request from the Department of Public Service.
- c. Method of disbursement.
 - i. All disbursements to VUSF programs, except Lifeline Assistance, shall be made by writing a check drawn on the VUSF, payable to the State Treasurer of Vermont. However, if so requested by any authorized payee, disbursements may be made by electronic transfer.

- ii. As compensation for its own fixed-cost functions, Contractor may make regular monthly transfers to its proprietary accounts in amounts authorized by Attachment B to this contract.
- iii. Under the terms of this contract, Contractor may also compensate its own proprietary accounts for Additional Services (such as audit services) and for reimbursable expenses. Contractor shall send an invoice of such Additional Services and expense amounts for approval of the State prior to payment. Contractor shall retain on file the documents supporting these transfers for audit purposes.
- d. If cash in the VUSF should be insufficient to meet requests for disbursements, Vermont law authorizes borrowing. Because the Public Service Board has historically maintained significant fund balances, borrowing has not been necessary in the history of the VUSF. Contractor has no responsibility to locate a line of credit or otherwise to obtain borrowed funds. Contractor has no responsibility to offer its own credit or property as collateral for a loan.
- e. If it appears that the VUSF fund balance will be negative at any time in the current fiscal year, Contractor will promptly notify the State. If the State initiates a docket to reduce expenditures, as provided under 30 V.S.A. § 7511, Contractor will prepare written testimony and will send a witness to explain that testimony at hearings.

7. Reports

- a. Contractor will file the reports described in this section and with the State and Department of Public Service. These reports will be used by the recipients to oversee the VUSF, but also to provide information to Executive and Legislative branch agencies in the budgeting process and to parties participating in VUSF rate-setting dockets. Contractor will exercise care and judgment in preparing reports, and Contractor will consider relevant current developments in the telecommunications industry that are likely to affect VUSF operations. Contractor will document all assumptions.
- b. Annual Forecasts:
 - i. By February 15th of each year, Contractor will prepare and provide to the Department of Public Service an annual revenue forecast based on actuals through November and a projection for the remainder of the current fiscal year to be used for the next fiscal year rate setting. The forecast shall be prepared after consultation with the Department of Public Service concerning events in Vermont that might affect VUSF revenues in the following year.
 - ii. The forecast shall be in a form approved by the Department of Public Service and shall include estimates of:
 - 1) Carrier revenues (actual and projected) subject to the VUSF charge by carrier type;
 - 2) A list of new carriers reporting to the VUSF;
 - 3) A list of inactive carriers;
 - 4) A list of closed carriers;
 - 5) A list of delinquent carriers; and

6) A Subscriber Line Charge revenue projection.

- iii. Before May 15th of each year, Contractor will update the preceding February forecast to include actual revenues through April of the current fiscal year.

c. Beginning-of-Year Forecast by Month

- i. In July of each year, Contractor will prepare a comprehensive “Beginning-of-Year Forecast” for each month of the new fiscal year. The projections shall be made using the best available information as to anticipated revenue and disbursement patterns. The Beginning-of-Year Forecast shall show, for each month, the following expected values:

- 1) Revenue received from carriers.
- 2) Revenue from interest and other sources.
- 3) Disbursement for all supported programs, including Lifeline credits.
- 4) Disbursement for operating expenses and audits.
- 5) Operating surplus or deficit.
- 6) Opening and closing fund balances.

d. Aged Receivables.

- i. After the conclusion of each operating quarter, Contractor will prepare and provide to State an aged receivables report describing, by age group, all overdue carrier receivables.

e. Monthly Operating Reports

- i. On or before the fifteenth day of each month, Contractor will provide the State with the following three reports:

- 1. Contractor will provide a monthly fund performance reports for the VUSF and Connectivity Fund showing, through the end of the preceding month, at least the following rows:

- a) Revenue received from carriers.
- b) Revenue from interest and other sources.
- c) Disbursement for all supported programs, including Lifeline credits.
- d) Disbursement for operating expenses and audits.
- e) Operating surplus or deficit.
- f) Opening and closing fund balances.

For each row, the monthly report shall show in separate columns; the monthly total; the year-to-date total; and the projected year-to-date total taken from the Beginning-of-Year Forecast.

- 2. Contractor will provide a monthly New Assets report showing assets, liabilities and net unrestricted assets, on an accrual basis. This report shall consider carrier contributions as receivables only if they are reported but unpaid.

3. Contractor will provide a monthly Lifeline program report listing, for each local exchange carrier:
 - a) Number of customers served.
 - b) Total credits granted.
 - c) Average payment per customer.
 - d) Administrative expense.

8. Financial Accounting and Audits

- a. The Auditor of Accounts has determined that the VUSF is “funds of the state,” and the VUSF is included within the State of Vermont’s financial reports. Contractor will use accounting (including internal control) and financial reporting systems that conform with Generally Accepted Accounting Principles for government entities, as defined by the Governmental Accounting Standards Board and the Financial Accounting Standards Board. Annually, Contractor will subject its VUSF operations to internal reviews.
- b. Financial Statements
 - i. By September 15th of each year, Contractor will send an unaudited annual financial statement for the VUSF for the preceding fiscal year to the State. Annual statements will be prepared according to Generally Accepted Accounting Principles for government entities.
 - ii. Funds available in the VUSF on September 1st of each year shall be moved to and held in a separate, interest bearing account. Monies from this account shall be apportioned in accordance with 30 V.S.A. § 7516 and disbursed in accordance with § 7511 and this Contract.
- c. Audit and Procedures Review
 - i. For each fiscal year of operations, Contractor will retain an independent accountant to audit its financial reports (Reimbursed expense).
 - ii. Contractor will obtain advance approval from the State and the Vermont State Auditor of Accounts for the auditor selected, the scope of the audit, and the audit contract. Following receipt of a proposal from Contractor, the State and the Vermont State Auditor of Accounts will respond to such a request within two weeks.
 - iii. The scope and procedures of the audit will be defined by Generally Accepted Government Auditing Standards (“GAGAS”). The auditor’s report will include an opinion on the audit of the Fiscal Agent’s financial statements relevant to the VUSF, as well as a written report on internal controls and compliance.
 - iv. On or before October 1st of each year, Contractor will send two copies of its audited VUSF financial statement to the State. Contractor shall also send one additional copy to the Department of Public Service, one additional copy to the Vermont Auditor of Accounts and one additional copy to the Vermont Department of Finance and Management.
- d. Books Available
 - i. Contractor books and records relating to the operation of the VUSF will be available on request for examination by the State or its authorized agent. Contractor will also make its financial records, excluding confidential information, available at reasonable times to carriers.

- ii. If the State hires an accountant to audit the records of one or more carriers, Contractor will cooperate with that accountant and provide copies of information previously submitted by the carrier.
- iii. Extraordinary auditing may also be required from time to time by the State (reimbursed expense.)

9. Confidential Information

- a. Some of the information provided to Contractor is confidential information. Contractor will safeguard this information using physical and data access controls, signed non-disclosure agreements, contractual agreements and employee education and awareness training.
 - i. Each employee and agent of Contractor having access to VUSF information will sign a non-disclosure agreement relative to protection of confidential information.
 - ii. Preceding each audit or compliance check of a carrier in which Contractor will review the records of a carrier, Contractor will sign a separate agreement for the protection of confidential information derived from those records.
 - iii. Contractor will take reasonable steps to ensure the physical security of confidential information maintained by Contractor or its employees.
- b. If Contractor receives a request to disclose confidential information from a person or organization other than the Vermont Public Service Board or the Department of Public Service or their authorized employees, Contractor shall deny the request and inform the requester that such requests for information may be filed at the Department of Public Service. The Department of Public Service will then determine whether the information should be disclosed.
- c. Any and all information collected under this contract shall be made available to the Public Service Board and the Department of Public Service or their authorized employees upon request.
- d. Contractor recognizes the confidential nature of the quasi-judicial deliberations of the Public Service Board and its staff and agrees to respect and honor those confidences.
- e. Contractor has or will adopt a Non-Disclosure policy requiring protection of information that is confidential under this contract. Contractor will require all employees who perform services under this contract to agree to be bound by that policy.

10. Personnel

- a. Contractor will assign a Fund Manager to oversee ongoing operations. The Fund Manager will act as first point of contact with the State, the Department of Public Service, the E-911 program, carriers and other interested parties. In the event Contractor seeks to change the Fund Manager during the term, Contractor shall seek advance consent of State for the new appointee, which consent shall not be unreasonably withheld.

- b. Qualified and experienced persons will be assigned to VUSF treasury operations including cash management, investments, billing and collection and accounts receivable.
- c. Qualified and experienced persons will be assigned to VUSF forecasting operations. These will be senior employees or equivalent who have expertise on economic changes in the telecommunications industry.
- d. Contractor has or will adopt a Conflict of Interest policy, and will apply that policy to all employees who perform services under this contract.
- e. Contractor's officers and employees will travel to Vermont as requested by the State to consult with State officials and other state government officials concerning the VUSF, to make periodic reports to the State, or to give testimony (Additional Service reimbursement).

11. Tax Exemptions

Contractor will take actions needed to ensure that the VUSF complies with all necessary requirements for exemption from federal, state and local taxes.

12. Subcontractors

- a. Contractor shall not assign or subcontract the performance of this agreement or any portion thereof to any other contractor without the prior written approval of the State, which approval shall not be unreasonably withheld.

13. Performance Measures

- a. The Department of Public Service will consider the following performance measure when evaluating the contractor's performance under this contract:
 - i. All work shall be submitted consistent with contract deadlines. In the event deadlines are not met, a request would be made for work to be submitted immediately. If there is no immediate improvement in timeliness submission of work this Contractor will no longer be retained by the Department of Public Service.

ATTACHMENT B – PAYMENT PROVISIONS

The maximum dollar amount payable under this contract is not intended as any form of a guaranteed amount. The Contractor will be paid for products or services actually delivered or performed, as specified in Attachment A, up to the maximum allowable amount specified on page 1 of this contract.

1. Prior to commencement of work and release of any payments, Contractor shall submit to the State:
 - a. a certificate of insurance consistent with the requirements set forth in Attachment C, Section 8 (Insurance), and with any additional requirements for insurance as may be set forth elsewhere in this contract; and
 - b. a current IRS Form W-9 (signed within the last six months).
2. Payment terms are **Net 30** days from the date the State receives an error-free invoice with all necessary and complete supporting documentation.
3. Contractor shall submit detailed invoices itemizing all work performed during the invoice period, including the dates of service, rates of pay, hours of work performed, and any other information and/or documentation appropriate and sufficient to substantiate the amount invoiced for payment by the State. All invoices must include the Contract # for this contract.
4. Contractor shall submit invoices to the State in accordance with the schedule set forth in this Attachment B. Unless a more particular schedule is provided herein, invoices shall be submitted not more frequently than monthly.
5. Invoices shall be submitted to the State at the following address: [REDACTED]
6. The payment schedule for delivered products, or rates for services performed, and any additional reimbursements, are as follows: [REDACTED]

DELETE THESE INSTRUCTIONS The above language up through section 5 is standard and should be included in all services contracts. Section 6 is merely a prompt for completion of the particular payment terms necessary to the contract, such as the schedule and/or rates of pay. Sample language is provided below, if helpful, but there is no required format.

TIME/MATERIALS: If payment will be based upon time and materials, specify the frequency of invoicing and the rate of payment. For example:

Contractor shall be paid \$50.00 per hour for work performed under this Contract, and shall submit invoices to the State not more frequently than monthly.

FIXED PRICE/DELIVERABLES: If payments are fixed price, specify an invoice schedule that corresponds to completion of the deliverables or phases of work described in Attachment A. For example:

Contractor shall submit invoices to the State in accordance with the following schedule:

<u>Deliverable</u>	<u>Invoice Amount</u>
Phase 1 completed by May 1, 2015	\$5,000.00

Phase 2 completed by July 1, 2015	\$5,000.00
Submit Final Report by August 31, 2015	\$8,000.00

NOTE: Additional guidance for drafting Attachment B is provided in Bulletin 3.5, Section IX.A.5 and Appendix III

**ATTACHMENT C: STANDARD STATE PROVISIONS
FOR CONTRACTS AND GRANTS
REVISED DECEMBER 15, 2017**

1. Definitions: For purposes of this Attachment, “Party” shall mean the Contractor, Grantee or Subrecipient, with whom the State of Vermont is executing this Agreement and consistent with the form of the Agreement. “Agreement” shall mean the specific contract or grant to which this form is attached.

2. Entire Agreement: This Agreement, whether in the form of a contract, State-funded grant, or Federally-funded grant, represents the entire agreement between the parties on the subject matter. All prior agreements, representations, statements, negotiations, and understandings shall have no effect.

3. Governing Law, Jurisdiction and Venue; No Waiver of Jury Trial: This Agreement will be governed by the laws of the State of Vermont. Any action or proceeding brought by either the State or the Party in connection with this Agreement shall be brought and enforced in the Superior Court of the State of Vermont, Civil Division, Washington Unit. The Party irrevocably submits to the jurisdiction of this court for any action or proceeding regarding this Agreement. The Party agrees that it must first exhaust any applicable administrative remedies with respect to any cause of action that it may have against the State with regard to its performance under this Agreement. Party agrees that the State shall not be required to submit to binding arbitration or waive its right to a jury trial.

4. Sovereign Immunity: The State reserves all immunities, defenses, rights or actions arising out of the State’s sovereign status or under the Eleventh Amendment to the United States Constitution. No waiver of the State’s immunities, defenses, rights or actions shall be implied or otherwise deemed to exist by reason of the State’s entry into this Agreement.

5. No Employee Benefits For Party: The Party understands that the State will not provide any individual retirement benefits, group life insurance, group health and dental insurance, vacation or sick leave, workers compensation or other benefits or services available to State employees, nor will the State withhold any state or Federal taxes except as required under applicable tax laws, which shall be determined in advance of execution of the Agreement. The Party understands that all tax returns required by the Internal Revenue Code and the State of Vermont, including but not limited to income, withholding, sales and use, and rooms and meals, must be filed by the Party, and information as to Agreement income will be provided by the State of Vermont to the Internal Revenue Service and the Vermont Department of Taxes.

6. Independence: The Party will act in an independent capacity and not as officers or employees of the State.

7. Defense and Indemnity: The Party shall defend the State and its officers and employees against all third party claims or suits arising in whole or in part from any act or omission of the Party or of any agent of the Party in connection with the performance of this Agreement. The State shall notify the Party in the event of any such claim or suit, and the Party shall immediately retain counsel and otherwise provide a complete defense against the entire claim or suit. The State retains the right to participate at its own expense in the defense of any claim. The State shall have the right to approve all proposed settlements of such claims or suits.

After a final judgment or settlement, the Party may request recoupment of specific defense costs and may file suit in Washington Superior Court requesting recoupment. The Party shall be entitled to recoup costs only upon a showing that such costs were entirely unrelated to the defense of any claim arising from an act or omission of the Party in connection with the performance of this Agreement.

The Party shall indemnify the State and its officers and employees if the State, its officers or employees become legally obligated to pay any damages or losses arising from any act or omission of the Party or an agent of the Party in connection with the performance of this Agreement.

Notwithstanding any contrary language anywhere, in no event shall the terms of this Agreement or any document furnished by the Party in connection with its performance under this Agreement obligate the State to (1) defend or

indemnify the Party or any third party, or (2) otherwise be liable for the expenses or reimbursement, including attorneys' fees, collection costs or other costs of the Party or any third party.

8. Insurance: Before commencing work on this Agreement the Party must provide certificates of insurance to show that the following minimum coverages are in effect. It is the responsibility of the Party to maintain current certificates of insurance on file with the State through the term of this Agreement. No warranty is made that the coverages and limits listed herein are adequate to cover and protect the interests of the Party for the Party's operations. These are solely minimums that have been established to protect the interests of the State.

Workers Compensation: With respect to all operations performed, the Party shall carry workers' compensation insurance in accordance with the laws of the State of Vermont. Vermont will accept an out-of-state employer's workers' compensation coverage while operating in Vermont provided that the insurance carrier is licensed to write insurance in Vermont and an amendatory endorsement is added to the policy adding Vermont for coverage purposes. Otherwise, the party shall secure a Vermont workers' compensation policy, if necessary to comply with Vermont law.

General Liability and Property Damage: With respect to all operations performed under this Agreement, the Party shall carry general liability insurance having all major divisions of coverage including, but not limited to:

Premises - Operations

Products and Completed Operations

Personal Injury Liability

Contractual Liability

The policy shall be on an occurrence form and limits shall not be less than:

\$1,000,000 Each Occurrence

\$2,000,000 General Aggregate

\$1,000,000 Products/Completed Operations Aggregate

\$1,000,000 Personal & Advertising Injury

Automotive Liability: The Party shall carry automotive liability insurance covering all motor vehicles, including hired and non-owned coverage, used in connection with the Agreement. Limits of coverage shall not be less than \$500,000 combined single limit. If performance of this Agreement involves construction, or the transport of persons or hazardous materials, limits of coverage shall not be less than \$1,000,000 combined single limit.

Additional Insured. The General Liability and Property Damage coverages required for performance of this Agreement shall include the State of Vermont and its agencies, departments, officers and employees as Additional Insureds. If performance of this Agreement involves construction, or the transport of persons or hazardous materials, then the required Automotive Liability coverage shall include the State of Vermont and its agencies, departments, officers and employees as Additional Insureds. Coverage shall be primary and non-contributory with any other insurance and self-insurance.

Notice of Cancellation or Change. There shall be no cancellation, change, potential exhaustion of aggregate limits or non-renewal of insurance coverage(s) without thirty (30) days written prior written notice to the State.

9. Reliance by the State on Representations: All payments by the State under this Agreement will be made in reliance upon the accuracy of all representations made by the Party in accordance with this Agreement, including but not limited to bills, invoices, progress reports and other proofs of work.

10. False Claims Act: The Party acknowledges that it is subject to the Vermont False Claims Act as set forth in 32 V.S.A. § 630 *et seq.* If the Party violates the Vermont False Claims Act it shall be liable to the State for civil penalties, treble damages and the costs of the investigation and prosecution of such violation, including attorney's fees, except as the same may be reduced by a court of competent jurisdiction. The Party's liability to the State under the False Claims Act shall not be limited notwithstanding any agreement of the State to otherwise limit Party's liability.

11. Whistleblower Protections: The Party shall not discriminate or retaliate against one of its employees or agents for disclosing information concerning a violation of law, fraud, waste, abuse of authority or acts threatening health or safety, including but not limited to allegations concerning the False Claims Act. Further, the Party shall not require such employees or agents to forego monetary awards as a result of such disclosures, nor should they be required to report misconduct to the Party or its agents prior to reporting to any governmental entity and/or the public.

12. Location of State Data: No State data received, obtained, or generated by the Party in connection with performance under this Agreement shall be processed, transmitted, stored, or transferred by any means outside the continental United States, except with the express written permission of the State.

13. Records Available for Audit: The Party shall maintain all records pertaining to performance under this agreement. "Records" means any written or recorded information, regardless of physical form or characteristics, which is produced or acquired by the Party in the performance of this agreement. Records produced or acquired in a machine readable electronic format shall be maintained in that format. The records described shall be made available at reasonable times during the period of the Agreement and for three years thereafter or for any period required by law for inspection by any authorized representatives of the State or Federal Government. If any litigation, claim, or audit is started before the expiration of the three-year period, the records shall be retained until all litigation, claims or audit findings involving the records have been resolved.

14. Fair Employment Practices and Americans with Disabilities Act: Party agrees to comply with the requirement of 21 V.S.A. Chapter 5, Subchapter 6, relating to fair employment practices, to the full extent applicable. Party shall also ensure, to the full extent required by the Americans with Disabilities Act of 1990, as amended, that qualified individuals with disabilities receive equitable access to the services, programs, and activities provided by the Party under this Agreement.

15. Set Off: The State may set off any sums which the Party owes the State against any sums due the Party under this Agreement; provided, however, that any set off of amounts due the State of Vermont as taxes shall be in accordance with the procedures more specifically provided hereinafter.

16. Taxes Due to the State:

- A. Party understands and acknowledges responsibility, if applicable, for compliance with State tax laws, including income tax withholding for employees performing services within the State, payment of use tax on property used within the State, corporate and/or personal income tax on income earned within the State.
- B. Party certifies under the pains and penalties of perjury that, as of the date this Agreement is signed, the Party is in good standing with respect to, or in full compliance with, a plan to pay any and all taxes due the State of Vermont.
- C. Party understands that final payment under this Agreement may be withheld if the Commissioner of Taxes determines that the Party is not in good standing with respect to or in full compliance with a plan to pay any and all taxes due to the State of Vermont.
- D. Party also understands the State may set off taxes (and related penalties, interest and fees) due to the State of Vermont, but only if the Party has failed to make an appeal within the time allowed by law, or an appeal has been taken and finally determined and the Party has no further legal recourse to contest the amounts due.

17. Taxation of Purchases: All State purchases must be invoiced tax free. An exemption certificate will be furnished upon request with respect to otherwise taxable items.

18. Child Support: (Only applicable if the Party is a natural person, not a corporation or partnership.) Party states that, as of the date this Agreement is signed, he/she:

- A. is not under any obligation to pay child support; or
- B. is under such an obligation and is in good standing with respect to that obligation; or

- C. has agreed to a payment plan with the Vermont Office of Child Support Services and is in full compliance with that plan.

Party makes this statement with regard to support owed to any and all children residing in Vermont. In addition, if the Party is a resident of Vermont, Party makes this statement with regard to support owed to any and all children residing in any other state or territory of the United States.

19. Sub-Agreements: Party shall not assign, subcontract or subgrant the performance of this Agreement or any portion thereof to any other Party without the prior written approval of the State. Party shall be responsible and liable to the State for all acts or omissions of subcontractors and any other person performing work under this Agreement pursuant to an agreement with Party or any subcontractor.

In the case this Agreement is a contract with a total cost in excess of \$250,000, the Party shall provide to the State a list of all proposed subcontractors and subcontractors' subcontractors, together with the identity of those subcontractors' workers compensation insurance providers, and additional required or requested information, as applicable, in accordance with Section 32 of The Vermont Recovery and Reinvestment Act of 2009 (Act No. 54).

Party shall include the following provisions of this Attachment C in all subcontracts for work performed solely for the State of Vermont and subcontracts for work performed in the State of Vermont: Section 10 ("False Claims Act"); Section 11 ("Whistleblower Protections"); Section 12 ("Location of State Data"); Section 14 ("Fair Employment Practices and Americans with Disabilities Act"); Section 16 ("Taxes Due the State"); Section 18 ("Child Support"); Section 20 ("No Gifts or Gratuities"); Section 22 ("Certification Regarding Debarment"); Section 30 ("State Facilities"); and Section 32.A ("Certification Regarding Use of State Funds").

20. No Gifts or Gratuities: Party shall not give title or possession of anything of substantial value (including property, currency, travel and/or education programs) to any officer or employee of the State during the term of this Agreement.

21. Copies: Party shall use reasonable best efforts to ensure that all written reports prepared under this Agreement are printed using both sides of the paper.

22. Certification Regarding Debarment: Party certifies under pains and penalties of perjury that, as of the date that this Agreement is signed, neither Party nor Party's principals (officers, directors, owners, or partners) are presently debarred, suspended, proposed for debarment, declared ineligible or excluded from participation in Federal programs, or programs supported in whole or in part by Federal funds.

Party further certifies under pains and penalties of perjury that, as of the date that this Agreement is signed, Party is not presently debarred, suspended, nor named on the State's debarment list at: <http://bgs.vermont.gov/purchasing/debarment>

23. Conflict of Interest: Party shall fully disclose, in writing, any conflicts of interest or potential conflicts of interest.

24. Confidentiality: Party acknowledges and agrees that this Agreement and any and all information obtained by the State from the Party in connection with this Agreement are subject to the State of Vermont Access to Public Records Act, 1 V.S.A. § 315 et seq.

25. Force Majeure: Neither the State nor the Party shall be liable to the other for any failure or delay of performance of any obligations under this Agreement to the extent such failure or delay shall have been wholly or principally caused by acts or events beyond its reasonable control rendering performance illegal or impossible (excluding strikes or lock-outs) ("Force Majeure"). Where Force Majeure is asserted, the nonperforming party must prove that it made all reasonable efforts to remove, eliminate or minimize such cause of delay or damages, diligently pursued performance of its obligations under this Agreement, substantially fulfilled all non-excused obligations, and timely notified the other party of the likelihood or actual occurrence of an event described in this paragraph.

26. Marketing: Party shall not refer to the State in any publicity materials, information pamphlets, press releases, research reports, advertising, sales promotions, trade shows, or marketing materials or similar communications to third parties except with the prior written consent of the State.

27. Termination:

- A. Non-Appropriation:** If this Agreement extends into more than one fiscal year of the State (July 1 to June 30), and if appropriations are insufficient to support this Agreement, the State may cancel at the end of the fiscal year, or otherwise upon the expiration of existing appropriation authority. In the case that this Agreement is a Grant that is funded in whole or in part by Federal funds, and in the event Federal funds become unavailable or reduced, the State may suspend or cancel this Grant immediately, and the State shall have no obligation to pay Subrecipient from State revenues.
- B. Termination for Cause:** Either party may terminate this Agreement if a party materially breaches its obligations under this Agreement, and such breach is not cured within thirty (30) days after delivery of the non-breaching party's notice or such longer time as the non-breaching party may specify in the notice.
- C. Termination Assistance:** Upon nearing the end of the final term or termination of this Agreement, without respect to cause, the Party shall take all reasonable and prudent measures to facilitate any transition required by the State. All State property, tangible and intangible, shall be returned to the State upon demand at no additional cost to the State in a format acceptable to the State.

28. Continuity of Performance: In the event of a dispute between the Party and the State, each party will continue to perform its obligations under this Agreement during the resolution of the dispute until this Agreement is terminated in accordance with its terms.

29. No Implied Waiver of Remedies: Either party's delay or failure to exercise any right, power or remedy under this Agreement shall not impair any such right, power or remedy, or be construed as a waiver of any such right, power or remedy. All waivers must be in writing.

30. State Facilities: If the State makes space available to the Party in any State facility during the term of this Agreement for purposes of the Party's performance under this Agreement, the Party shall only use the space in accordance with all policies and procedures governing access to and use of State facilities which shall be made available upon request. State facilities will be made available to Party on an "AS IS, WHERE IS" basis, with no warranties whatsoever.

31. Requirements Pertaining Only to Federal Grants and Subrecipient Agreements: If this Agreement is a grant that is funded in whole or in part by Federal funds:

- A. Requirement to Have a Single Audit:** The Subrecipient will complete the Subrecipient Annual Report annually within 45 days after its fiscal year end, informing the State of Vermont whether or not a Single Audit is required for the prior fiscal year. If a Single Audit is required, the Subrecipient will submit a copy of the audit report to the granting Party within 9 months. If a single audit is not required, only the Subrecipient Annual Report is required.

For fiscal years ending before December 25, 2015, a Single Audit is required if the subrecipient expends \$500,000 or more in Federal assistance during its fiscal year and must be conducted in accordance with OMB Circular A-133. For fiscal years ending on or after December 25, 2015, a Single Audit is required if the subrecipient expends \$750,000 or more in Federal assistance during its fiscal year and must be conducted in accordance with 2 CFR Chapter I, Chapter II, Part 200, Subpart F. The Subrecipient Annual Report is required to be submitted within 45 days, whether or not a Single Audit is required.

- B. Internal Controls:** In accordance with 2 CFR Part II, §200.303, the Party must establish and maintain effective internal control over the Federal award to provide reasonable assurance that the Party is managing the Federal award in compliance with Federal statutes, regulations, and the terms and conditions of the award. These internal controls should be in compliance with guidance in "Standards for Internal Control in the Federal Government" issued by the Comptroller General of the United States and the "Internal Control

Integrated Framework”, issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO).

- C. Mandatory Disclosures:** In accordance with 2 CFR Part II, §200.113, Party must disclose, in a timely manner, in writing to the State, all violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal award. Failure to make required disclosures may result in the imposition of sanctions which may include disallowance of costs incurred, withholding of payments, termination of the Agreement, suspension/debarment, etc.

32. Requirements Pertaining Only to State-Funded Grants:

- A. Certification Regarding Use of State Funds:** If Party is an employer and this Agreement is a State-funded grant in excess of \$1,001, Party certifies that none of these State funds will be used to interfere with or restrain the exercise of Party’s employee’s rights with respect to unionization.
- B. Good Standing Certification (Act 154 of 2016):** If this Agreement is a State-funded grant, Party hereby represents: (i) that it has signed and provided to the State the form prescribed by the Secretary of Administration for purposes of certifying that it is in good standing (as provided in Section 13(a)(2) of Act 154) with the Agency of Natural Resources and the Agency of Agriculture, Food and Markets, or otherwise explaining the circumstances surrounding the inability to so certify, and (ii) that it will comply with the requirements stated therein.

(End of Standard Provisions)

CERTIFICATE OF COMPLIANCE

For a bid to be considered valid, this form must be completed in its entirety, executed by a duly authorized representative of the bidder, and submitted as part of the response to the proposal.

- A. **NON COLLUSION:** Bidder hereby certifies that the prices quoted have been arrived at without collusion and that no prior information concerning these prices has been received from or given to a competitive company. If there is sufficient evidence to warrant investigation of the bid/contract process by the Office of the Attorney General, bidder understands that this paragraph might be used as a basis for litigation.
- B. **CONTRACT TERMS:** Bidder hereby acknowledges that is has read, understands and agrees to the terms of this RFP, including Attachment C: Standard State Contract Provisions, and any other contract attachments included with this RFP.

- C. **FORM OF PAYMENT:** Does Bidder accept the Visa Purchasing Card as a form of payment?

____ Yes ____ No

- D. **WORKER CLASSIFICATION COMPLIANCE REQUIREMENT:** In accordance with Section 32 of The Vermont Recovery and Reinvestment Act of 2009 (Act No. 54), the following provisions and requirements apply to Bidder when the amount of its bid exceeds \$250,000.00.

Self-Reporting. Bidder hereby self-reports the following information relating to past violations, convictions, suspensions, and any other information related to past performance relative to coding and classification of workers, that occurred in the previous 12 months.

Summary of Detailed Information	Date of Notification	Outcome

Subcontractor Reporting. Bidder hereby acknowledges and agrees that if it is a successful bidder, prior to execution of any contract resulting from this RFP, Bidder will provide to the State a list of all proposed subcontractors and subcontractors' subcontractors, together with the identity of those subcontractors' workers compensation insurance providers, and additional required or requested information, as applicable, in accordance with Section 32 of The Vermont Recovery and Reinvestment Act of 2009 (Act No. 54), and Bidder will provide any update of such list to the State as additional subcontractors are hired. Bidder further acknowledges and agrees that the failure to submit subcontractor reporting in accordance with Section 32 of The Vermont Recovery and Reinvestment Act of 2009 (Act No. 54) will constitute non-compliance and may result in cancellation of contract and/or restriction from bidding on future state contracts.

E. Executive Order 05 – 16: Climate Change Considerations in State Procurements Certification

Bidder certifies to the following (Bidder may attach any desired explanation or substantiation. Please also note that Bidder may be asked to provide documentation for any applicable claims):

1. Bidder owns, leases or utilizes, for business purposes, space that has received:

- ☐ Energy Star® Certification
- ☐ LEED®, Green Globes®, or Living Buildings ChallengeSM Certification
- ☐ Other internationally recognized building certification:

-
2. Bidder has received incentives or rebates from an Energy Efficiency Utility or Energy Efficiency Program in the last five years for energy efficient improvements made at bidder's place of business. Please explain:

-
3. Please Check all that apply:

- ☐ Bidder can claim on-site renewable power or anaerobic-digester power ("cow-power"). Or bidder consumes renewable electricity through voluntary purchase or offset, provided no such claimed power can be double-claimed by another party.
- ☐ Bidder uses renewable biomass or bio-fuel for the purposes of thermal (heat) energy at its place of business.
- ☐ Bidder's heating system has modern, high-efficiency units (boilers, furnaces, stoves, etc.), having reduced emissions of particulate matter and other air pollutants.
- ☐ Bidder tracks its energy consumption and harmful greenhouse gas emissions. What tool is used to do this? _____
- ☐ Bidder promotes the use of plug-in electric vehicles by providing electric vehicle charging, electric fleet vehicles, preferred parking, designated parking, purchase or lease incentives, etc..
- ☐ Bidder offers employees an option for a fossil fuel divestment retirement account.
- ☐ Bidder offers products or services that reduce waste, conserve water, or promote energy efficiency and conservation. Please explain:

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-
4. Please list any additional practices that promote clean energy and take action to address climate change:

F. Acknowledge receipt of the following Addenda:

Addendum No.: _____ Dated: _____

Addendum No.: _____ Dated: _____

Addendum No.: _____ Dated: _____

Bidder Name: _____ Contact Name: _____

Address: _____ Fax Number: _____

_____ Telephone: _____

_____ E-Mail: _____

By: _____ Name: _____

Signature of Bidder (or Representative)

(Type or Print)

END OF CERTIFICATE OF COMPLIANCE

